

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GETTY IMAGES, INC.; and GETTY
IMAGES (US), INC.,

Petitioners,

v.

CAR CULTURE, INC., a Florida corporation;
AUTOMOBILIA II, LLC, a Florida limited
liability company,

Respondents.

No.

**DECLARATION OF ISABEL
NICHOLSON IN SUPPORT OF
PETITION TO COMPEL
ARBITRATION**

I, Isabel Nicholson, declare as follows:

1. I am a Senior Partnership Manager at Getty Images (Seattle), Inc., a position I have held since April 11, 2016. Getty Images (Seattle), Inc. provides support services to Getty Images, Inc. and Getty Images (US), Inc. (collectively, “Getty Images”). I make this Declaration based upon personal knowledge and, if called to testify, could and would testify competently to the facts set forth herein.

2. My responsibilities at Getty Images include managing third party distribution partnerships.

EXHIBIT A

From: David Grace <dgrace@loeb.com>

Sent: 26 July 2019 21:35

To: Jane Ashurst <Jane.Ashurst@gettyimages.com>

Cc: Isabel Nicholson <Isabel.Nicholson@gettyimages.com>; cindy.lewis@carculture.com

Subject: Cindy Lewis/Car Culture - Getty Images - License Issues - 208780-10009

Hi Jane –

Cindy Lewis of Car Culture has asked me to respond to your email. She would be happy to work with you to try to make the relationship more productive for everyone. However, I have to disagree with your analysis of the 2006 contract.

On exclusivity, the contract expressly acknowledges that CC retained the right to license the Products for use by others: “Nothing in this Section 2 shall be construed to prevent Partner from marketing and selling or *licensing* Partner’s Products directly to an end user customer, with Partner retaining all proceeds from such sales, provided that the Partner communicates to Getty Images, *any exclusive license restrictions granted.*” To the extent that the sentence refers to retention of funds, it refers to not sharing with Getty. Nothing in this sentence prevents CC from using salespeople or commissioned agents to help us find potential end user customers. At the time of the contract, Cindy had an online stock photography service and a licensing agent.

On similars, your interpretation of the meaning of “similars” is much broader than the contract definition. Nothing in the agreement refers to images that are “completely different and dissimilar”. The contract definition of similars is images that are “substantially the same”. As you may be aware, photographers often take multiple images that are essentially the same or substantially the same.

On types of uses, the license to Getty is for distribution of rights managed images. At the time of the contract, Getty was licensing works for editorial and advertising purposes only. In any event, nothing in the agreement granted Getty the right to license the creation of derivative works for merchandising purposes. Paragraph 2.1 specifically limits any alterations or edits to those needed for technical or editorial compatibility issues and paragraph 9.3 requires Getty to use the Car Culture® trademark and appropriate copyright notices. With respect to the image of the proposed derivative work for merchandising, she would happy to consider approving the proposed use on a one-time basis if you will provide us with the details of the proposed transaction.

I would be happy to discuss with you by telephone these issues and anything else that might

make the relationship more productive for all. Thank you in advance.

Best regards, Dave

David W. Grace

Partner

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